IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.8414 OF 2005

Azad son of Dharamchand Derasaria
Azad Dharamchand Jain .... Applicant

versus

The State Maharashtra .... Respondent.

Mr.R.M.Agarwal i/by Mr.I.A,.Bagaria & U.I.Bagaria for the applicant.
Ms.M.M.Deshmukh, APP, for the State/Respondent.

CORAM : V.M.KANADE, J.

DATED : 13th January 2006.

ORAL ORDER

1. Heard learned counsel appearing on behalf of the applicant and learned APP appearing on behalf of the State/respondent.

2. The applicant has filed this application for anticipatory bail as he has apprehension that

he is likely to be arrested in connection with an offence which is registered by Narpoli Police Station, Bhiwandi vide Crime No.T-311 of 2005 for the offences punishable under Sections 304(A), 286, 337 and 338 of the Indian Penal Code and under Sections 3, 4 and 5 of the Explosive Substance Act.

3. It is submitted by the learned counsel appearing for the applicant that the applicant had imported certain scraps from Dubai for the purpose of breaking down the said scrap materials after obtaining due clearance from the concerned authorities. The said material was brought to the factory of the applicant after it was cleared by the custom authorities. During the process of breaking down of this scrap material an explosion took place and two persons died in the said explosion. A complaint accordingly was lodged by PSI Vijaykumar Baburao Lambture against the applicant and his manager. During investigation it transpired that the scrap material contained certain launchers which contained explosive materials. It is submitted by the learned counsel appearing for the applicant that the said incident was a trasic accident and there was no

intention on the part of the applicant to import explosive and the only intention was to bring the scrap material and separate the aluminium and sell it in the open market as it fetches good prices in India. It is submitted by him that the Manager was arrested and he was released on bail soon thereafter. He further submitted that all the offences in the complaint are bailable offences except the offence which is made punishable under the Explosive Substance Act.

4. On the other hand the learned APP appearing for the State/Respondent has submitted that in the incident the lives of two people are lost due to negligence of the applicant. She further submitted that the applicant was not permitted and was not granted a licence to break down the material manually and he had not obtained necessary licence from the competent authority. She also submitted that looking at the gravity of the offence, this is not a fit case to grant anticipatory bail.

5. In the present case, it is an admitted position that the scrap material was imported by the applicant after necessary formalities had

been completed and permission from the competent authority had been obtained. It is not a case of the prosecution from the complaint and whatever material which is available as of today that this material i.e. explosive substances were intentionally and deliberately imported for the purpose of using the same for any terrorist activity or any other illegal purpose. It appears that while breaking down the material one of the material contained certain explosions. In the peculiar facts and circumstances of the case, in my view, this is a fit case for grant of anticipatory bail. The Manager of the applicant, who is in-charge of the factory, has already been released on bail. There is evidence to indicate that the applicant was not at the place where the said explosion had taken place. In this view of the matter, in the event of arrest of the applicant in connection with Crime No.T-311 of 2005 registered by Narpoli Police Station, Bhiwandi, for the offences punishable under Sections 304(A), 286, 337 and 388 of the Indian Penal Code and under Sections 3, 4 and 5 of the Explosive Substance Act, he be released on bail in the sum of Rs.50,000/- with one or two sureties in the like amount. Applicant to remain

present before the Investigating Officer, Narpoli Police Station, Bhiwandi for a week from 11.00 a.m. to 5.00 p.m. from 16.1.2006. Thereafter till filing of the charge sheet, he shall report to the police once in a week and after the charge sheet is filed, report to the concerned police station once in a month. The application is disposed of in the above terms.

[V.M.KANADE,J]